

## REMARKS/ARGUMENTS

In the Office Action mailed February 19, 2010, claims 1-6 were rejected. In response, Applicant hereby requests reconsideration of the application in view of the proposed amendments and the below-provided remarks. No claims are added or canceled. Applicant submits that the proposed amendments place the present application in condition for allowance or in better condition for appeal.

For reference, proposed amendments are presented for claims 1 and 6. In particular, the proposed amendments for claims 1 and 6 delete the reference to the “internal clock.” These proposed amendments are supported by the subject matter described in the specification.

### Interview Summary

Applicant expresses appreciation to Examiner Guyton for allowing Applicant’s representative a telephonic interview on April 14, 2010, to discuss the claims of the present application. In summary, the proposed amendments presented herein were discussed, and it was determined that these proposed amendments in combination with resubmission of the declaration previously submitted will be sufficient to overcome the current grounds of rejection.

### Claim Rejections under 35 U.S.C. 102 and 103

Claims 1-6 were rejected based on one or more cited references. The cited reference(s) relied on in these rejections include:

Richmond et al. (U.S. Pat. No. 7,296,170, hereinafter Richmond)

Pohlmeyer et al. (U.S. Pat. No. 6,959,014, hereinafter Pohlmeyer)

In particular, claims 1-4 and 7 were rejected under 35 U.S.C. 102(e) as being anticipated by Richmond. Claim 5 was rejected under 35 U.S.C. 103(a) as being unpatentable over Richmond in view of Pohlmeyer. However, Applicant respectfully

submits that these claims are patentable over Richmond and Pohlmeyer for the reasons provided below.

Swearing back of Richmond

The attached declaration, which is signed by the sole inventor of the present application, provides evidence to establish invention of the subject matter of the claims of the present application prior to the effective date of Richmond. Therefore, the rejections under 35 U.S.C. 102 and 103 based on Richmond should be withdrawn.

In particular, Exhibit A of the attached declaration shows an Invention Description which explains aspects of the conception of the subject matter described and claimed in the present application at least as of February 12, 2003. Also, Exhibits B and C of the attached declaration show an ID abstract (dated December 18, 2003) and a Search Report (date December 22, 2003), respectively, related to the ongoing preparation and review of the present application.

Exhibits A, B, and C are all dated prior to the filing date of Richmond (January 23, 2004). Additionally, Exhibits B and C are each dated within about two months of the actual filing date of the foreign application to which the present application claims the benefit of priority. Within a typical corporate environment, communications which occur within about two months of the actual filing date of a patent application should be considered sufficient evidence of due diligence in pursuing constructive reduction to practice based on the actual filing of the present application. Thus, Applicant submits that the documentation of Exhibits B and C is evidence of due diligence between at least the date of the ID Abstract and the Search Report through the foreign (EP) application priority date of the present application. More specifically, Applicant submits that the documentation of Exhibits B and C is evidence of due diligence at least between the date of the ID Abstract (December 18, 2003) and the Search Report (December 22, 2003) through the actual filing date (February 27, 2004) of the related EP Application 04100789.9.

Therefore, the claims of the present application are patentable over Richmond, either alone or in combination with other cited references, because the attached declaration establishes invention of the subject matter of the claims of the present

application and diligence in reduction to practice prior to the effective date of Richmond. Accordingly, Applicant respectfully requests that the rejections of the claims based on Richmond, either alone or in combination with other references, be withdrawn.

### **CONCLUSION**

Applicant respectfully requests reconsideration of the claims in view of the proposed amendments and the remarks made herein. A notice of allowance is earnestly solicited.

At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account **50-4019** pursuant to 37 C.F.R. 1.25. Additionally, please charge any fees to Deposit Account **50-4019** under 37 C.F.R. 1.16, 1.17, 1.19, 1.20 and 1.21.

Respectfully submitted,

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